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March 8, 2023

Via ECF

Hon. Jennifer E. Willis, U.S.M.J.
United States District Court, Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Franco v. 380 Second LLC et al*
Case No.: 1:22-cv-04011-PAE-JW

Dear Honorable Magistrate Judge Willis:

This law firm represents Defendant Small Door Veterinary, PLLC (“the PLLC”) in the above-referenced action.

Pursuant to the directives in Your Honor’s March 1, 2023 Order [Dckt. No. 49], this letter respectfully serves to provide the Court with a status update in the above-referenced matter.

The parties held a meet-and-conferral Zoom call on March 3, 2023 at 2:00 p.m. to discuss the narrow issue of whether the parties in this action are correctly named. After some back and forth, the parties were able to agree upon a stipulation regarding the substitution of Small Door Gramercy LLC as a defendant in this action in place of currently named defendant, the PLLC. The stipulation is being filed concurrently with this letter for the Court’s approval.

However, there are two issues that the parties were not able to agree upon in their discussions, both of which concern ongoing discovery and which the PLLC respectfully requests that the Court rule upon. Specifically, the PLLC proposed that the following be included in the stipulation:

- IT IS THEREFORE FURTHER STIPULATED, AGREED AND ORDERED that on or before thirty (30) days from the date the Court so-orders this Stipulation, Plaintiff shall respond to Small Door Veterinary, PLLC’s (i) requests for the production of documents (“Small Door’s Document Requests”); and (ii) interrogatories (“Small Door’s Interrogatories”, and together with Small Door’s Document Requests, “Small Door’s Discovery Requests”), propounded on November 17, 2022; and
- IT IS THEREFORE FURTHER STIPULATED, AGREED AND ORDERED that the fact discovery deadline is hereby extended to, through and including, April 30, 2023.

Plaintiff did not agree to include the foregoing in the stipulation for the reasons Plaintiff raised with the Court at the February 14, 2023 discovery dispute conference, specifically that the discovery requests propounded by the PLLC were served after the Court-Ordered November 7, 2022 deadline. Defendant 380 Second LLC was agreeable to the foregoing. The parties’ positions with respect to these discovery issues are set forth in more detail below.

Plaintiff's Position:

Although Small Door Veterinary, PLLC is a properly named defendant in this action, based on the assertions made by the PLLC to this Court, plaintiff was amenable to substituting in the lessee of the Small Door Vet premises in lieu of the PLLC provided that the substituting defendant (Small Door Gramercy LLC) stand in the shoes of the PLLC defendant. By executing the stipulation plaintiff has kept to her word.

PLLC however, now seeks to utilize this joint letter to the Court to re-argue its misleading position that plaintiff has not responded to their late served discovery responses.¹ PLLC previously raised this argument at the February 14, 2023 discovery dispute conference and the Court did not rule in their favor. At the conference the Court noted PLLC's multiple failures to meet Court deadlines.² PLLC should not be permitted to re-argue its position nor flaunt Court deadlines, especially in light of their repeated failure to respect Court deadlines or the discovery process.³ PLLC's actions should therefore not be countenanced.

Defendant Small Door Veterinary, PLLC's Position:

As discussed during the most recent in-person status conference on February 14, 2023, the parties wish to complete fact witness depositions, and Plaintiff had never responded to Small Door's Discovery Requests, propounded on November 17, 2022.

The PLLC respectfully submits that the proposed language concerning: (i) Plaintiff's responses to Small Door's Discovery Requests, propounded on November 17, 2022; and (ii) an extension of the fact discovery deadline to, through and including, April 30, 2023, are in the best interests of judicial economy and efficiency, because it narrowly resolves the foregoing issues, and allows the case to proceed expeditiously.

Defendant 380 Second LLC's Position:

Defendant 380 Second LLC is amenable to the discovery timelines proposed by the PLLC as set forth above.

Thank you, in advance, for your attention to the foregoing.

¹ PLLC again misleads the Court as it fails to inform the Court that on December 16, 2022 plaintiff responded to PLLC's discovery requests by letter. informing it that it "Plaintiff objects to each of the Interrogatories and to each request in the Document Requests as they were served after the Court's Ordered deadline by which Defendant Small Door Veterinary, PLLC was permitted to serve them. As such, the Interrogatories and Document Requests are untimely and in contravention of the Court's Order"

² As discussed at the February 14, 2023 Court conference, and admitted to by the PLLC, PLLC failed to: (i) attend the parties' Rule 26(f) conference;(ii) serve discovery requests within the deadline So Ordered by the Court; and (iii) respond to plaintiff's motion to compel.

³ Plaintiff was forced to file a motion to compel discovery because PLLC failed to provide discovery responses and also ignored plaintiff's multiple attempts to meet and confer.

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